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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75—378

ROBERT MALDINI, ROSE MALDINI, NEAL MARESCA, JULIA MARESCA, HAROLD MERCK, DOROTHY MERCK, PAUL DI MATTEO, FRED APREA, BLANCHE R. APREA, MANUEL MORENO, LAURA MORENO, JOHN SIMPSON and NINA SIMPSON,

Plaintiffs-Appellants,

against

JEROME A. AMBRO, Supervisor, RICHARD KINSELLA, THOMAS CASEY, LEONARD HORN and CLAYTON MUGRIDGE, as members of the Town Board, Town of Huntington, County of Suffolk, State of New York, and Health Care Agencies of the New York Annual Conference of the Methodist Church, Inc.,

Defendants-Respondents.

ON APPEAL FROM A JUDGMENT OF THE SUPREME COURT OF THE STATE OF NEW YORK ENTERED UPON AN ORDER OF THE COURT OF APPEALS OF THE STATE OF NEW YORK

MOTION OF RESPONDENT HEALTH CARE AGENCIES OF THE NEW YORK ANNUAL CONFERENCE OF THE METHODIST CHURCH, INC., TO DISMISS APPEAL

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INDEX

PAGE

I—Chapter 62, Subdivision 49.01 of the Building Zone Ordinance of the Town of Huntington Creating the R-RM Retirement Community District Does Not Violate the Equal Protection Clause of the Fourteenth Amendment 2

II—Chapter 62, Subdivision 49.01 of the Building Zone Ordinance of the Town of Huntington is Rationally Related to a Legitimate State and Federal End and the Means Employed are Rationally Related to the Pursuit of that End .. 8

III—Conclusion 17

Table of Authorities

Decisions:

Ferguson v. *Skrupa* (1963), 372 U.S. 726, 83 S. Ct. 1028 7

Helvering v. *Davis* (1937), 301 U.S. 619, 57 S. Ct. 904 12

Marino v. *Town of Ramapo et al.*, 68 Misc. 2d 44, 326 N.Y.S. 2d 162 5

McDonald v. *Board of Elections* (1969), 394 U.S. 802, 89 S. Ct. 1404 16

State of Washington rel. Seattle Trust Co. v. *Roberge* (1928), 278 U.S. 116, 49 S. Ct. 50 3

Tigner v. *Texas*, 310 U.S. 141, 147 (1940) 16

Statutes: PAGE

Housing and Urban Development Act of 1965, as amended by the Housing and Urban Development Act of 1970, *12 U.S.C.A. § 1701(h)(1)* 10

Limited-Profit Housing Companies Law, *McKinney's Private Housing Finance Law § 11* 13

New York State Constitution, *McKinney's Constitution, Article XVIII § 1* 13

New York State Urban Development Act, *McKinney's Unconsolidated Laws of New York § 6252* 14

New York State Urban Development and Research Corporation Act, *McKinney's Unconsolidated Laws of New York § 6302* 15

Older Americans Act of 1965, *42 U.S.C.A. § 3001* 9

Senior Citizens Housing Act of 1962, *12 U.S.C.A. § 1701(R)* 8

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Respondent Health Care Agencies of the New York Annual Conference of the Methodist Church, Inc. moves that the appeal herein taken be dismissed on the ground that the appeal does not present a substantial federal question.

This is an appeal from a decision of the Court of Appeals of the State of New York which among other things, rejected appellants' contention that Chapter 62, Subdivision 49.01 of the Building Zone Ordinance of the Town of Huntington, which Chapter created the R-RM Retirement Community District, is unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment.

I

Chapter 62, Subdivision 49.01 of the Building Zoning Ordinance of the Town of Huntington creating the R-RM Retirement Community District, does not violate the Equal Protection Clause of the Fourteenth Amendment.

Appellants concede that "financial aid and housing . . . for the elderly, . . . are worthy and legitimate government objectives in themselves relating to public health, safety, morals or general welfare". [Jurisdictional Statement pg. 9] Clearly, the governmental authorities have the power to regulate the land use to meet such legitimate objectives. It follows that to properly provide housing for the elderly, a governmental authority must also have the power to regulate the land use giving due regard to the user.

The ordinance in question does not limit the use of land to housing for the aged nor does it restrict the ownership of land so zoned to non-profit corporations. The ordinance specifically permits any use permitted in an R-80 Residence district which includes:

"(1) Single family dwellings

(2) Farm, nursery, truck garden, country estate

(3) Churches, temples, parish houses, convents, monasteries

(4) Public schools

(5) Private elementary and secondary schools [with certain restrictions]

(6) Library, museum or art gallery, conducted to serve primarily the residents of the Town and operated by a municipal agency or by a non-profit agency organized or chartered locally for the purpose.

(7) Town park, playground, athletic field, beach, bathhouse, marina, or other Town recreationed use.

(8) Municipal parking fields

(9) Fire station

(10) Municipal water supply reservoir, tank, standpipe, pumping station or filter bed, provided any tank or standpipe shall be set back . . ."

The ordinance in question could easily have been added to the Zoning Code of the Town of Huntington as an amendment by adding subdivision (2) of the R-RM District to the R-80 Residence District as a permitted use. However, to insure proper control over the use of the land, a separate zoning district was established. This permitted the municipality to control the "Height, Area and Bulk" of any building erected on land designated as R-RM.

This Court, in its decision in the case of *The State of Washington rel. Seattle Title Trust Company* v. *Roberge*, 278 U.S. 116, 49 S. Ct. 50, recognized the validity of a zoning ordinance which regulated the user and owner of a parcel of realty. In that case, the City of Seattle amended its zoning ordinance to provide, as a permitted use in the "First Residence District":

> "A philanthropic home for children or for old people shall be permitted in first residence district when

the written consent shall have been obtained of the owners of two-thirds of the property within four hundred (400) feet of the proposed building."

This Court held that the attempted delegation of power to two-thirds of the property owners within 400 feet was violative of the due process clause of the Constitution and struck down the ordinance in this regard and found that the trustee was entitled to have the building permit applied for. The Court at page 121 stated:

"Zoning measures must find their justification in the police power exerted in the interest of the public. Euclid v. Ambler Realty Co., supra, 387 of 272 U. S. (47 S. Ct. 118). 'The governmental power to interfere by zoning regulations with the general rights of the landowner by restricting the character of his use, is not unlimited and, other questions aside, such restriction cannot be imposed if it does not bear a substantial relation to the public health, safety, morals, or general welfare.' Nectow v. Cambridge, supra, page 188 of 277 U. S. (48 S. Ct. 448). Legislatures may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities. Lawton v. Steele, 152 U. S. 133, 137, 14 S. Ct. 499, 38 L. Ed. 385; Adams v. Tanner, 244 U. S. 590, 594, 37 S. Ct. 662, 61 L. Ed. 1336, L. R. A. 1917F, 1163, Ann. Cas. 1917D, 973; Meyer v. Nebraska, 262 U. S. 390, 399, 400, 43 S. Ct. 625, 67 L. Ed. 1042, 29 A. L. R. 1446; Burns Baking Co. v. Bryan, 264 U. S. 504, 513, 44 S. Ct. 412, 68 L. Ed. 813, 32 A. L. R. 661; Norfolk Ry. v. Public Service Commission, 265 U. S. 70, 74, 44 S. Ct. 439, 68 L. Ed. 904; Pierce v. Society of Sisters, 268 U. S. 510, 534, 535, 45 S. Ct. 571, 69 L. Ed. 1070, 39 A. L. R. 468; Weaver v. Palmer Bros. Co., 270 U. S. 402, 412, 415, 46 S. Ct. 320, 70 L. Ed. 654; Tyson & Brother v. Banton, 273 U. S. 418, 442, 47 S. Ct. 426, 71 L. Ed. 718.

"[3, 4] The right of the trustee to devote its land to any legitimate use is property within the protection of the Constitution. The facts disclosed by the record make it clear that the exclusion of the new home from the first district is not indispensable to the general zoning plan. And there is no legislative determination that the proposed building and use would be inconsistent with public health, safety, morals or general welfare. The enactment itself plainly implies the contrary. The grant of permission for such building and use, although purporting to be subject to such consents, shows that the legislative body found that the construction and maintenance of the new home was in harmony with the public interest and with the general scope and plan of the zoning ordinance."

The Court continued, at pages 122-123:

"As the attempted delegation of power cannot be sustained, and the restriction thereby sought to be put upon the permission is arbitrary and repugnant to the due process clause, it is the duty of the superintendent to issue, and the trustee is entitled to have, the permit applied for."

An in depth analysis of the question of the constitutionality of such zoning in light of the Equal Protection Clause was made by Justice Morton B. Silberman in *Marino et al.* v. *Town of Ramapo, et al.*, 68 Misc. 2d 44, 325 N.Y.S. 2d 162, 183, wherein the Court, citing decisions of the United States Supreme Court, stated:

"Petitioners' further argument that the project being based on age and income classification amounts to a denial of the equal protection clause is singularly unimpressive in logic or authority.

"It has been held that a denial of equal protection occurs where there exists a systematic pattern of discrimination between classes of persons with no ra-

tional basis for differentiation (*Mtr. of Posner* v. *Rockefeller,* 31 A.D. 2d 352, 353, 297 N.Y.S. 2d 867, 868, affd. 25 N.Y. 2d 720, 307 N.Y.S. 2d 224, 255 N.E. 2d 563). On the other hand, there is no denial of equal protection if a reasonable relationship supports the classification and the purpose to be achieved (*McGowan* v. *Maryland,* 366 U.S. 420, 81 S. Ct. 1101, 6 L. Ed. 2d 393; *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 79 S. Ct. 437, 3 L. Ed. 2d 480; *Matter of Bauch* v. *City of New York,* 21 N.Y. 2d 599, 606-607, 289 N.Y.S. 2d 951, 954, 237 N.E. 2d 211, 213, cert. den. 393 U.S. 834, 89 S. Ct. 108, 21 L. Ed. 2d 105). As our Court of Appeals recently stated:

" 'Equal protection does not require that all persons be dealt with identically, but it does require that a distinction made have some relevance to the purpose for which the classification is made.' (Citing case.) Nor is the Constitution offended if the classification has some reasonable or rational basis. (Citing case.) Furthermore, '(a) statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' (Citing case.) (*People* v. *Ditniak,* 28 N.Y. 2d 74, 78, 320 N.Y.S. 2d 25, 27, 268 N.E. 2d 768, 769).

"Classifications predicated upon natural factors such as age and income have long been recognized as permissible in many legislative forms such as the social security, income tax, housing, welfare, labor, motor vehicle laws, selective service requirements, voting franchise requisites, etc. (see 16A *C.J.S. Constitutional Law* §§ 491, 498).

"Consequently, differentiation based upon age and income factors is permissible as long as it is rational and does not result in invidious discrimination (*Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491; *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600). Classification does not offend the Constitution 'merely because it is not made with mathematical nicety, or because in practice it results in some inequality' (*Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 78, 31 S. Ct. 337, 340, 55 L. Ed. 369).

"While it is the public policy of this State to assure every individual an equal opportunity for decent housing (*Center Management Co.* v. *State Div. of Human Rights,* 34 A.D. 2d 637, 309 N.Y.S. 885, affd. 27 N.Y. 2d 914, 317 N.Y.S. 2d 632, 265 N.E. 2d 926), it has been recognized that '(p)roviding low rental housing for persons with low income is a State concern' (*Matter of Fuller* v. *Urstadt,* 28 N.Y. 2d 315, 318, 321 N.Y.S. 2d 601, 603, 270 N.E. 2d 321, 323). The ends of this salutary policy may be achieved by the means employed herein, to wit: the construction of low-income housing for the poor and elderly; else how would these persons otherwise secure decent housing. . . .

"Accordingly, the court finds that the within classification is rational, adheres to established precedent, is in furtherance of the statutory and constitutional public policy of this State, promotes the Federal housing policy, does not constitute invidious discrimination and is not violative of the equal protection clause. Petitioners' complaint, which in reality relates to the existence of the project in their community (*Fletcher* v. *Romney,* 323 F. Supp. 189, *supra*), is more properly addressed to the Legislature rather than to the courts (*James* v. *Valtierra,* 402 U.S. 137, 91 S. Ct. 1331, 28 L. Ed. 2d 678, *supra* (April 26, 1971))."

In *Ferguson* v. *Skrupa,* 372 U.S. 726, 729, 731 83 S. Ct. 1028, this Court held:

"Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by

this Court to strike down laws which were thought unreasonable that is, unwise or incompatible with some particular economic or social philosophy.

"• • •

"The doctrine that prevailed in Lochner, Coppage, Adkins, Burns, and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws. As this Court stated in a unanimous opinion in 1941, 'We are not concerned • • • with the wisdom, need, or appropriateness of the legislation.' Legislative bodies have broad scope to experiment with economic problems, and this Court does not sit to 'subject the state to an intolerable supervision hostile to the basic principles of our government and wholly beyond the protection which the general clause of the Fourteenth Amendment was intended to secure.' *Sporles* v. *Binford,* 286 U.S. 374, 52 S. Ct. 581."

II

Chapter 62, Subdivision 49.01 of the Building Zone Ordinance of the Town of Huntington is rationally related to a legitimate state and federal end and the means employed are rationally related to the pursuit of that end.

That housing for the aged is a matter of national concern was evidenced by the enactment by Congress of the "Senior Citizens Housing Act of 1962", *12 U.S.C.A. § 1701 (R)* wherein the need was stated clearly:

"The Congress finds that there is a large and growing need for suitable housing for older people both in

urban and rural areas. Our older citizens face special problems in meeting their housing needs because of the prevalence of modest and limited incomes among the elderly, their difficulty in obtaining liberal long-term home mortgage credit, and their need for housing planned and designed to include features necessary to the safety and convenience of the occupants in a suitable neighborhood environment. The Congress further finds that the present programs for housing the elderly under the Department of Housing and Urban Development have proven the value of Federal credit assistance in this field and at the same time demonstrated the urgent need for an expanded and more comprehensive effort to meet our responsibilities to our senior citizens."

This need is further stated in the "Older Americans Act of 1965", *42 U.S.C.A. § 3001,* where Congress stated:

"The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

(1) An adequate income in retirement in accordance with the American standard of living.

(2) The best possible physical and mental health which science can make available and without regard to economic status.

(3) *Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford.*

(4) Full restorative services for those who require institutional care.

(5) Opportunity for employment with no discriminatory personnel practices because of age.

(6) Retirement in health, honor, dignity—after years of contribution to the economy.

(7) Pursuit of meaningful activity within the widest range of civic, cultural, and recreational opportunities.

(8) Efficient community services, including access to low-cost transportation, which provide social assistance in a coordinated manner and which are readily available when needed.

(9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness.

(10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives." (Italics supplied)

The Congress recognized that the non-profit organization is a vital organ in effectuating this policy when it enacted the Housing and Urban Development of 1965, thereafter amended by the Housing and Urban Development Act of 1970, *12 U.S.C.A. § 1701b(h)(1)*, which states:

"(h) (1) For the purpose of assisting housing under this section on an experimental basis, subject to the limitations of this subsection, the term 'housing owner' (in addition to the meaning prescribed in subsection (b) of this section) includes—

'(A) a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is a

mortgagor under a mortgage which receives the benefits of the interest rate provided for in the proviso in section 1715*l*(d) (5) of this title and which, after August 10, 1965, has been approved for mortgage insurance under section 1715*l*(d) (3) of this title and has been approved for receiving the benefits of this section;

'(B) a private nonprofit corporation or other private nonprofit legal entity which is a mortgagor under a mortgage insured under section 1715v(c) (3) of this title and which, after August 10, 1965, has obtained final endorsement of such mortgage for mortgage insurance and has been approved for receiving the benefits of this section; and

'(C) a private nonprofit corporation, a public body or agency, or a cooperative housing corporation, which is a borrower under section 1701q of this title and has been approved for receiving the benefits of this section: *Provided,* That, with respect to properties financed with loans under such section made on or before August 10, 1965, payments shall not be made with respect to more than 20 per centum of the dwelling units in any property so financed.

'(D) a private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, which is assisted under section 1715z—1 of this title and which has been approved for receiving the benefits of this section: *Provided,* That payments shall not be made with respect to more than 20 per centum of the dwelling units in any property so financed except that the foregoing limitation may be increased to 40 per centum of the dwelling units in any such property if the Secretary determines that

such increase is necessary and desirable in order to provide additional housing for individuals and families meeting the requirements of subsection (c) of this section.'"

Legislative power to provide for the aged as a part of its responsibility for the general welfare was clearly established by Mr. Justice Cardozo, speaking for the Supreme Court in *Helvering* v. *Davis,* 301 U.S. 619, 57 S. Ct. 904. Upholding the constitutionality of the Social Security Act, he stated:

"The purge of nation-wide calamity that began in 1929 has taught us many lessons. Not the least is the solidarity of interests that may once have seemed to be divided. Unemployment spreads from state to state, the hinterland now settled that in pioneer days gave an avenue of escape. *Home Building & Loan Association* v. *Blaisdell,* 290 U.S. 398, 442, 54 S. Ct. 231, 241, 78 L. Ed. 413, 88 A.L.R. 1418. Spreading from state to state, unemployment is an ill not particular but general, which may be checked if Congress so determines, by the resources of the nation. If this can have been doubtful until now, our ruling today in the case of the Steward Machine Co., supra, has set the doubt at rest. But the ill is all one or at least not greatly different whether men are thrown out of work because there is no longer work to do or because the disabilities of age make them incapable of doing it. Rescue becomes necessary irrespective of the cause. The hope behind this statute is to save men and women from the rigors of the poor house as well as from the haunting fear that such a lot awaits them when journey's end is near.

"Congress did not improvise a judgment when it found that the award of old age benefits would be conducive to the general welfare. The President's Committee on Economic Security made an investigation

and report, aided by a research staff of Government officers and employees, and by an Advisory Council and seven other advisory groups. Extensive hearings followed before the House Committee on Ways and Means, and the Senate Committee on Finance. A great mass of evidence was brought together supporting the policy which finds expression in the act.

"Whether wisdom or unwisdom resides in the scheme of benefits set forth in Title II, it is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here as often is with power, not with wisdom."

Article XVIII of the New York State Constitution, *McKinneys Constitution, Article XVIII, § 1,* adopted and approved in 1938 specifically empowers the legislature to provide for low rent housing for persons of low income.

In recognition of the need to provide suitable housing for the aged, among others, the New York State Legislature adopted the *Private Finance Housing Law.* Article II of this law established Limited Profit Housing Companies Law. *The Private Housing Finance Law,* Section 11, as amended, declares the public policy of the State of New York to be as follows:

"It is hereby declared that there exists in municipalities in this state a serious inadequate supply of safe and sanitary dwelling or non-housekeeping accommodations for families and persons of low income, including accommodations for handicapped persons of low income and aged care accommodations for aged persons of low income; that such conditions are due, in large measure, to overcrowding and concentration of the population, improper planning, excessive land coverage, lack of proper light, air and space, improper sanitary facilities and inadequate protection from fire hazards; that such conditions constitute an emergency and a grave menace to the health, safety, morals, wel-

fare and comfort of citizens of this state, necessitating speedy relief which cannot readily be provided by the ordinary unaided operation of private enterprise and require that provision be made by which private free enterprise may be encouraged to invest in companies regulated by law as to rents, profits, dividends and disposition of their property or franchises and engaged in providing such housing facilities and other facilities incidental or appurtenant thereto for families or persons of low income; that it is necessary that provision be made for participation by the state, its municipalities and the New York state housing finance agency in the financing of such housing, for the acquisition by such companies of real property required for such purposes and for public assistance to such companies by the granting of tax exemptions; that the cooperation of the state, its subdivisions and the New York state housing finance agency is necessary to accomplish such purposes; that the provision of such adequate, safe and sanitary housing accommodations by such companies jointly or severally are public uses and purposes for which public money may be loaned and private property may be acquired by and for such companies and tax exemptions granted; that such conditions require the creation of the companies hereinafter prescribed for the purpose of attaining the ends herein recited; and the necessity in the public interest for the provisions hereinafter enacted is hereby declared as a matter of legislative determination."

The policy of the State of New York, when legislating in this area, was again set forth when the New York State Urban Development Corporation Act and the New York State Urban Development and Research Corporation Act were adopted.

McKinneys Unconsolidated Laws of New York § 6252 sets forth the legislative findings and purposes with respect to the New York State Urban Development Corporation and states, in part:

> "It is further found and declared that there continues to exist throughout the state a seriously inadequate supply of safe and sanitary dwelling accommodations for persons and families of low income. This condition is contrary to the public interest and threatens the health, safety, welfare, comfort and security of the people of the State . . ."
>
> "It is further declared to be the policy of the state to promote the safety, health, morals and welfare of the people of the state through the provisions of adequate, safe and sanitary dwelling accommodations and facilities incidental and appurtenant thereto for persons and families of low income . . ."

McKinneys Unconsolidated Laws of New York § 6302 sets forth the legislative findings and purposes with respect to the Corporation for Urban Development and Research of New York and states, in part:

> "a) a seriously inadequate supply of safe and sanitary dwelling accommodations within the financial reach of a substantial number of families and persons, including aged persons, living within the state; . . ."
>
> "The legislature hereby declares it to be the policy of this state to provide an adequate supply of safe and sanitary dwelling accommodations; . . . and to arrest the spread of deterioration and blight and promote the economic and physical development of such areas through the construction, reconstruction, rehabilitation and improvement of residential, commercial and industrial structures and facilities therein."

The Ordinance in question clearly bears a rational relationship to the ends to be achieved. As stated by this

Court in *McDonald* v. *Board of Election,* 394 U.S. 802, 808-809:

> "Though the wide leeway allowed the states by the Fourteenth Amendment to enact legislation that appears to affect similarly situated people differently, and the presumption of statutory validity that adheres thereto, admit of no settled formula, some basic guidelines have been firmly fixed. The distinctions drawn by a challenged statute must bear some rational relationship to a legitimate state end and will be set aside as violative of the Equal Protection Clause only if based on reasons totally unrelated to the pursuit of that goal. Legislatures are presumed to have acted constitutionally even if source materials normally resorted to for ascertaining their grounds for action are otherwise silent, *and their statutory classifications will be set aside only if no grounds can be conceived to justify them.* See *McGowan* v. *Maryland,* 366 U. S. 420 (1961); *Kotch* v. *Board of River Port Pilot Commissioners,* 330 U.S. 552 (1947); *Lindsley* v. *National Carbonic Gas Co.,* 220 U. S. 61 (1911). With this much discretion, a legislature traditionally has been allowed to take reform 'one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind,' *Williamson* v. *Lee Optical of Oklahoma, Inc.,* 348 U. S. 483, 489 (1955)."

See also *Tigner* v. *Texas,* 310 U.S. 141, 147 (1940), wherein this Court stated:

> "The equality at which 'the equal protection' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins 'the equal protection of the laws' and laws are not abstract propositions. They do not relate to abstract units A, B, and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in fact or in opinion to be treated in law as though they are the same."

Clearly it is the intent of the people of the nation and state under their respective Constitutions and the purpose and policy of the Congress and the state legislature to recognize the need to provide housing facilities for aged persons of low income. It is inconceivable that the Town Board does not have the legislative power to implement this purpose and policy at the very level at which such implementation is essential in order to be effective.

III

Conclusion.

The R-RM Retirement Community District Zone Ordinance of the Town of Huntington falls well within the permissible limits of local zoning authority long recognized by this Court. The contention that as applied to the Appellants, the Ordinance denies them equal protection of the laws in violation of the Fourteenth Amendment presents no substantial federal question. Respondent's Motion to Dismiss the Appeal should be granted.

Respectfully submitted,

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